

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

3:16-cr-00051-BR

Plaintiff,

v.

ORDER DENYING MOTION TO  
COMPEL PRODUCTION OF  
INFORMATION REGARDING  
LAW ENFORCEMENT'S USE  
AND DISPLAY OF FORCE

AMMON BUNDY, JON RITZHEIMER,  
JOSEPH O'SHAUGHNESSY, RYAN  
PAYNE, RYAN BUNDY, BRIAN  
CAVALIER, SHAWNA COX, PETER  
SANTILLI, JASON PATRICK,  
DUANE LEO EHMER, DYLAN  
ANDERSON, SEAN ANDERSON,  
DAVID LEE FRY, JEFF WAYNE  
BANTA, SANDRA LYNN ANDERSON,  
KENNETH MEDENBACH, BLAINE  
COOPER, WESLEY KJAR, COREY  
LEQUIEU, NEIL WAMPLER, JASON  
CHARLES BLOMGREN, DARRYL  
WILLIAM THORN, GEOFFREY  
STANEK, TRAVIS COX, ERIC LEE  
FLORES, and JAKE RYAN,

Defendants.

BROWN, Judge.

This matter comes before the Court on Defendants' Motion (#697) to Compel Production of Information Regarding Law Enforcement's Use and Display of Force filed by Defendant Jon Ritzheimer and on behalf of all Defendants.

In their Motion Defendants seek 18 specific categories of

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REGARDING LAW ENFORCEMENT'S USE AND DISPLAY OF FORCE

information relating to the number and type of law enforcement personnel who participated in the response to the events at the Malheur National Wildlife Refuge (MNWR); the use of body armor, "tactical response gear," and weaponry used by law enforcement; and information about law-enforcement activities and planning of operations. Defendants contend the information is material to their defense because it is relevant to whether Defendants were exercising their rights under the Second Amendment to use firearms in self-defense and whether Defendants intended only to engage in a peaceful, lawful protest that negates the necessary *mens rea*. Finally, Defendants contend the evidence is relevant to show government and potential witness bias.

The government, on the other hand, asserts the evidence is irrelevant to any issue related to self-defense because Defendants arrived at the MNWR armed before any law-enforcement presence arrived, Defendants could not have reasonably feared law-enforcement presence that they did not perceive, and there has not been any showing that the law-enforcement response they did see was unlawful. Moreover, the government argues the information that Defendants seek would not show any potential government or witness bias.

"Federal Rule of Criminal Procedure 16 grants criminal defendants a broad right to discovery." *United States v. Stever*, 603 F.3d 747, 752 (9th Cir. 2010). In order to be entitled to

discovery of certain information, however, the "defendant must make a threshold showing of materiality, which requires a presentation of facts which would tend to show that the Government is in possession of information helpful to the defense.'" *Stever*, 603 F.3d at 752 (quoting *United States v. Santiago*, 46 F.3d 885, 893 (9th Cir. 1995)). "Rule 16 permits discovery that is relevant to the development of a possible defense.'" *United States v. Muniz-Jaquez*, 718 F.3d 1180, 1184-85 (9th Cir. 2013)(quoting *United States v. Mandel*, 914 F.2d 1215, 1219 (9th Cir. 1990)).

Here Defendants have failed to demonstrate that the detailed discovery they seek is material to their defense. To the extent that Defendants contend such information is relevant to any claim of common-law self-defense regarding their alleged conduct at the MNWR, such relevance flows from the degree of imminent force that the Defendants perceived rather than from a showing of the equipment actually possessed or plans law enforcement made in the general area but as to which Defendants lacked knowledge. See *United States v. Biggs*, 441 F.3d 1069, 1071 (2006)(to establish a prima facie case of self-defense, a defendant must make an offer of proof that he has a "reasonable belief that the use of force was necessary to defend himself or another against the immediate use of unlawful force."). In other words, the evidence relevant to Defendants' claim that they carried firearms at the MNWR for

purposes of self-defense is the threat that Defendants actually perceived rather than general information about law-enforcement equipment and plans that were outside their perception.

Moreover, Defendants have not offered any evidence that the equipment possessed or plans made by law enforcement with regard to Defendants' activities at the MNWR were unlawful in any way.

See *id.*

Similarly, Defendants have not demonstrated why the information that they seek is relevant to negating the government's proof as to their mental state. Although Defendants may contend at trial that they possessed firearms solely for self-defense rather than to intimidate or to threaten someone, the evidence relevant to that claim is that which Defendants actually perceived and which, in turn, informed their asserted need to carry firearms for self-defense. Accordingly, the Court finds the information that Defendants seek is not relevant to Defendants' anticipated contention that they did not act with sufficient *mens rea* to commit the crime.

In addition, Defendants have failed to demonstrate the general information about the law-enforcement presence, equipment, and plans is relevant to any defense under either the First or Second Amendment. Although Defendants contend that they have a constitutionally protected right to bear arms in self-defense based on *District of Columbia v. Heller*, 544 U.S. 570

(2008), they do not demonstrate that general information of which they were not actually aware regarding law-enforcement equipment, plans, and presence is relevant to any such right. Similarly, Defendants have not established such information is relevant to Defendants' claim that their possession of firearms was expressive conduct protected by the First Amendment, or that the information of law-enforcement equipment and plans beyond their actual perception would be relevant to any such claim.

Finally, Defendants contention that the requested information regarding law enforcement, presence, equipment, and plans could be used as evidence of bias is too speculative to implicate a right to discovery. Such a contention without a more detailed showing does not justify such discovery because it does not bear a sufficient nexus to discrediting the government's evidence or to demonstrating Defendants are otherwise not guilty of the charges brought by the government.

On this record, therefore, the Court concludes Defendants have failed to demonstrate the information they seek regarding law enforcement's use and display of force in relation to the events at the MNWR is material to any viable defense, and therefore, Defendants are not entitled to discovery of that information under Rule 16.

**CONCLUSION**

For these reasons, the Court **DENIES** Defendants' Motion (#697) to Compel Production of Information Regarding Law Enforcement's Use and Display of Force.

IT IS SO ORDERED.

DATED this 15th day of July, 2016.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge